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The Honorable John D. Dingell
U. S. House of Representatives
Ranking Minority Member
Committee on Commerce
2322 Rayburn House Office Building
Washington, DC 20515-6115

Dear Representative Dingell:

Thank you for providing us with an opportunity to respond to your questions concerning electricity restructuring issues. Enclosed are Entergy's responses.

We look forward to future dialogue with you concerning the many complex issues associated with the restructuring debate. As you review these questions, please feel free to contact us for further information and details.

Again, thank you for your attention to these issues. Your leadership in this debate is appreciated and we look forward to working with you and your staff.

Sincerely,

S. M. Henry Brown, Jr.

Enclosure(s)

RESPONSES OF EDWIN LUPBERGER
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
ENTERGY
IN RESPONSE TO REP. DINGELL
U.S. HOUSE OF REPRESENTATIVES

1. From your company's point of view, is it necessary for Congress to enact legislation bearing on retail competition, and why? If you favor legislation, please outline which issues should be addressed and how you think they should be resolved.

If the nation is to have the benefits of regional competition with expanded access to efficient generation markets in an expeditious and orderly process, Entergy believes that at <u>some</u> point in the future it will be necessary for Congress to enact comprehensive electric utility legislation. The real question before the Congress is not <u>whether</u> Congress should legislate but <u>when</u> Congress should make retail access mandatory.

In reviewing the issues that need to be included in federal legislation, Congress should keep in mind the level of activity concerning retail choice in the states and at the FERC. More than 49 states currently have some type of electricity restructuring proceedings underway. Some states have ordered pilot retail wheeling programs, while others will implement customer choice plans next year. FERC's final open-access transmission rule has now been finalized.

Any legislation mandating retail access as a matter of law and policy must give the states and FERC <u>significant</u> time and latitude in picking the pace, method and means for achieving retail competition. This approach would permit the states to proceed with competition studies and retail wheeling programs and experiments. This will provide Congress and regulators with the necessary information and experience to make informed decisions about retail access.

At the same time, there are concerns that allowing the states to go forward will allow a hodgepodge competitive landscape to develop for retail competition. Federal legislation must strike a reasonable balance that allows the states to determine the initial pace and scope of competition, while recognizing that there is an overriding federal interest in achieving an efficient national electricity market.

Entergy supports a fair and equitable transition to competition. Entergy believes that all prudently incurred strandable costs should be recovered. In addition, Entergy, from its perspective as a multi-state holding company, believes that any potential federal legislation should rationalize possible inconsistencies and conflicts in the various state restructuring models. PUHCA should be repealed now in order to remove a major barrier to developing a competitive retail market. Finally, Entergy believes that reliability must be maintained. While this can be effectively managed in a competitive market, it will take time.

2. If the state(s) you serve has adopted or is considering adopting retail competition, what are your biggest concerns? Please be specific. Indicate how you are dealing with them and any recommendations you may have.

Entergy has filed its plan to establish retail competition for open access in Arkansas and Texas. Entergy anticipates filing similar plans in its other jurisdictions as its regulators move forward with plans for retail competition. The proposal outlines Entergy's commitment to retail competition at the end of a reasonable transition period, which in Entergy's case is a seven year transition period. This will allow Entergy to address effectively strandable cost recovery <u>without</u> raising base utility rates. Furthermore, during the transition period, the company will unbundle generation and competitive retail services, develop new transmission tariffs and redefine its distribution services. Entergy will also initiate steps to develop and establish a regional independent system operator and regional power exchange.

A crucial element in Entergy's proposal is the ability to recover its strandable costs over the seven year time frame. This proposal provides the opportunity for Entergy to recover its stranded costs without seeking a rate increase on its customers (see 3b for further information on stranded costs). Simply put, Entergy 's commitment to establish retail competitive markets is dependent on having a reasonable opportunity to recover its strandable costs. Attached as Appendix A is the testimony of Jerry Jackson, Senior Vice President, filed with the Public Utility Commission of Texas explaining this position.

3. **Whether or not you favor federal legislation, please indicate your position on the following specific issues (to the extent not addressed in your responses):**

   a. ***A Federal mandate requiring states to adopt retail competition by a date certain.*** **If retail competition is under consideration in the state(s) you serve, do you believe Congress should provide additional direction or authority?**

Any legislation mandating retail access as a matter of law and policy must give the states and FERC significant time and latitude in picking the pace, method and means for achieving retail competition. This approach would permit the states to proceed with the competition studies and retail wheeling programs and experiments. This will give Congress and regulators badly needed information and experience to make informed decisions about retail access.

If Congress were to enact legislation imposing a date certain for retail competition, then Entergy believes that any such legislation must allow utilities the right to recover prudently incurred strandable costs. As mentioned in the first answer, there are several additional issues that Congress should address in federal legislation, including multi-state jurisdictional issues, PUHCA, and reliability.

State programs that generally meet the competition policies underlying a federal bill should be grandfathered. However, care must be taken to ensure that a grandfathering provision not be overly broad, allowing states to impose inconsistent policies on important restructuring issues. Thus, a state plan or rule that merely addresses or considers stranded cost recovery, or disallows recovery of a certain percentage of such costs, should not be grandfathered. Similarly, a grandfathering provision should not allow states to impose different requirements on different classes of competitors, or allow some competitors to escape remaining regulation.

b. *Recovery of stranded investment.* If the state(s) you serve already has adopted retail competition, how was this issue addressed and are you satisfied with the outcome? If your state(s) is considering adopting retail competition, how would you recommend that this issue be treated? Do you think Congress should enact legislation relating to stranded cost issues, and if so what would you recommend? Is securitization a useful mechanism for dealing with stranded costs, and whom does it benefit?

Entergy strongly believes that FERC and the states should provide full recovery of prudently incurred, non-mitigable, wholesale and retail stranded costs. The recovery of costs that utilities incurred under the old regulatory regime, but that may become impossible to recover in the new regime, is critical to the successful restructuring of the utility industry.

All utilities, including Entergy, have made investments over the years to satisfy their obligation to provide adequate and reliable service to consumers within their service territory. If utilities encounter a competitive market for electricity, where the market price of generation will most likely be set by the marginal cost of new, combined-cycle combustion turbines, they would not be able to recover the costs associated with some of their past investments. If regulators and legislators move to competition without a transition plan that deals with prudently-incurred utility investment, utility investors will be severely harmed. There will simply be a transfer of wealth in the billions of dollars with no gain in economic efficiency.

As part of any transition plan to introduce retail competition into the electric utility industry, Congress must honor commitments made to investors in past regulatory decisions. In honoring such commitments, two facts must be recognized. First, regulators have already found these investments to be prudent, and these costs are already in rates. Second, companies must continue to have the same opportunity they currently have -- not a guarantee -- to recover these prudent investments. Thus, the utility's shareholders should be afforded no greater or lesser level of security in the transition to competition than they already possess under the current regulatory structure.

There are several reasons why this principle is fundamental. The first reason to honor existing commitments for the recovery of prudently-incurred past investments, is best seen from the perspective of a long-run view of the economy. The financial weakening, if not insolvency, of the electric utility industry could well jeopardize the basic infrastructure of such a crucial industry. It is critically important to have a financially healthy entity capable of providing and maintaining the basic delivery infrastructure in a competitive environment.

The second reason to honor past commitments is seen from the vantage point of the utility and its investors. The issue of strandable costs concerns basic fairness, as well as legal obligations. In return for meeting its duty to serve, traditional regulation has constrained returns of electric utilities to levels that are below those considered reasonable by most other businesses in the competitive marketplace, even if traditional regulation has theoretically assured that returns do not fall below a reasonable level. This arrangement is at the heart of the regulatory compact that encourages investors to bring their money to the table of the regulated utility industry. Investors are volunteers; no one may compel private investors to supply capital -- even to a regulated firm. They must be induced to do so by the prospect of a return commensurate with the associated risk. Utility investors have never been compensated for the risk of a forced write-off of prudent investments.

Shareholder ability to recover prudently invested capital should also be a concern for customers because it impacts the regulated firm's cost of capital. Some aspects of the utility industry are likely to continue to be regulated for many years, in particular some aspects of transmission and distribution service. A repudiation by regulators of their responsibility to allow for a reasonable opportunity for the recovery of capital will have an adverse impact on the willingness of investors to supply funds in the future to those portions of the business which continue to be regulated. To the extent that investors react adversely, capital costs of that portion of transmission and distribution systems which remain regulated will be higher than they otherwise would be.

Properly accounting for the ramifications of the regulatory compact is part of the stable and predictable legal environment that is critical to the underpinnings of free markets. In order for a market economy to function effectively and efficiently, all parties must be able to depend on the arrangements they have made, especially when those arrangements include governmental commitments. Contract rights and property rights must be acknowledged and enforced. Failing to honor commitments already made would undermine future market processes before they even begin.

A violation of historically accepted regulatory obligations to the utilities would occur if those utilities were denied a meaningful opportunity to continue to recover prudent investments made in the past. These obligations arise from past congressional and regulatory decisions, state statutes and the Due Process clauses of both state and federal constitutions. Every utility would be required by fiduciary obligations to investors to use all available means to fight any attempt which might be made to deprive the utility's investors of a previously granted right to recover these past investments. Both the law, and notion of fundamental fairness, require that any plan for a transition to competition must honor existing commitments. Any potential federal legislation must recognize this cardinal principal.

Allowing some customers to access third party providers of generation raises the very real potential of certain customers bypassing the responsibility for costs that would, under traditional regulation, be shifted to the remaining customers. The Entergy service territory is particularly vulnerable to this problem because a large percentage of the load is from industrial customers with high load factors. If those customers are allowed to escape responsibility for prudent investments made on their behalf, they may well make uneconomic bypass decisions based solely on short-term considerations. They would benefit from the basic infrastructure of the electric utility system designed for high levels of reliability and safety without paying their fair share, while, at the same time, purchasing electricity from a new market entrant or producing it themselves at a cost higher than the utility's going-forward cost.

The principle that certain customers should not be allowed to shift cost responsibility to others requires a balancing of interests. The utility must be provided a reasonable opportunity to recover its costs; the remaining customers should not be required to bear costs caused by others, and the customers seeking alternatives should bear the costs properly attributable to them.

Finally, securitization is an extremely useful tool for dealing with strandable cost recovery. It allows the utility to recover potentially strandable costs while at the same time possibly lowering rates. However, securitization will not lead to large rate reductions.

c. ***Reciprocity*. Can states condition access to their retail markets on the adoption of retail competition by other states? Should Congress enact such a requirement? Could such a requirement create an incentive for states with low electric rates not to adopt retail competition, in order to keep cheap power at home?**

Congress should require reciprocity to ensure an open competitive market. It would be fundamentally unfair to protect a power supplier operating in a closed state from competition while at the same time allowing that power supplier to compete for customers of another power supplier in an open state. Therefore, Congress must provide clear federal guidance concerning these sorts of arrangements.

States with low electric rates are currently deciding whether or not to play in the competitive market without such a reciprocity agreement. If states with low rates believe opening up their retail markets will raise their low rates, they are unlikely to open up their markets to competition. If the market cannot provide the benefits of competition, including lower rates, then retail open access fails its first test. Entergy believes a fair and orderly process can be established to provide the benefits of regional competition in an expeditious and orderly process.

4. **If Congress enacts comprehensive restructuring legislation, should it mandate "unbundling" of local distribution company services? What impact would this have, and would the effects differ for various customer classes? Would this entail substantial expense, and who would incur any such costs?**

Unbundling of retail power sales from the rates for delivery of power over local distribution wires is a key component of comprehensive restructuring. Thereafter, the utility should be free to determine and define and separate their distribution and customer retail services.

5. **Recently Chair Moler of the Federal Energy Regulatory Commission recommended that, as part of comprehensive legislation, Congress authorize the Commission to enforce compliance with North American Electric Reliability Council standards to help maintain reliability of service. Do you believe this is necessary, and why or why not?**

Yes. It should be noted that Chair Moler also identified areas of concern with the North American Electric Reliability Council, including undefined "rules-of-the-road" and voluntary membership. If these issues are resolved then FERC, and not the Department of Energy, should have the authority to ensure it is fairly applied to all participants in the competitive retail world.

6. **What concerns does your company have with respect to the role of public power and federal power marketing agencies in an increasingly competitive wholesale electric market? In markets in which retail competition has been adopted? Are there concerns you would like to have addressed if Congress enacts comprehensive restructuring legislation? Should Congress consider changes to federal law as it applied to regulation of public or federal power's transmission obligations?**

Entergy has had a long-standing working relationship with the rural cooperatives, municipalities and publicly owned utilities. This system has worked well. As we move toward a competitive system in the utility markets, competition must not be skewed by an imbalance of legal or regulatory burdens. This requires a fair and equitable competitive market, where all participants are subject to the same rules and laws.

If public power chooses to participate in this market, then a review and balancing of public power's federal subsidies must take place. As an example, until TVA's historical and ongoing direct and indirect federal subsidies (estimated to be more than one billion dollars) are addressed, the fence should not be taken down. If not, the competitive advantage gained by TVA will significantly tilt the level playing field needed for competition.

Public power should be subject to the same regulation at the FERC as other utilities. As an example, private utilities have to file open access transmission tariffs at the FERC, so that access can be provided quickly. Public power is not required to make these filings, and as open competition will inevitably require access across public systems, the approval process to gain access across public power systems will significantly slow down transactions. If retail choice is mandated at the federal level, then final decisionmaking authority on rates, terms and conditions of interstate transmission as well as stranded costs should be with FERC for nonregulated utilities.

7. If Congress enacts comprehensive restructuring legislation, should changes be made to federal, state or local tax codes, and if so, why? Please be specific.

In review of existing public power exemptions from the federal and state income taxes, there may be a need for changes to the tax code if public power systems seek to participate in the competitive market. Overall, tax and accountability procedures for investor owned utilities vary significantly from public power, municipalities and cooperatives. There should be a review of these requirements to ensure that suppliers receive equitable tax treatment.

8. **What, if any, concerns do you have about the reliability of the electric system? If the industry moved to retail competition, will adequate reserved be available? Is the transmission system capable of handling full retail competition?**

Entergy believes that a move to retail competition will not negatively impact reliability of service. Reliability must be maintained. While it can be effectively managed, it will take time.

9. **If Congress enacts legislation on retail competition, should changes to the Public Utility Company Holding act of 1935 (PUHCA) be included? If so, what would you recommend? In particular, how should Congress address market power concerns in any such legislation? Are transition rules needed during the period before effective competition becomes a reality?**

PUHCA should be repealed whether or not there is federal legislation for retail competition. PUHCA, envisioned to protect consumers, now only serves as a barrier to providing benefits to consumers. PUHCA does <u>not</u> address market power issues. If it did, we would not need the Federal Power Act or state public utility laws. Repealing PUHCA will not lead to a monopoly situation. Mergers will still need the approval of state utility commissions, FERC and antitrust rules.

Entergy supports S. 621, a bill to repeal PUHCA eighteen months after the date of enactment, and supports the components contained within this legislation. S. 621 fully provides for ongoing protection of consumers through accountability procedures, affiliate transactions review, and continued FERC and State commission rate regulation and audit authority, a far more direct means of addressing legitimate market concerns and protecting consumers against potential abuses.

10. To what degree, if any, have recent Securities and Exchange Commission administrative orders and Rule 58 decreased the need for legislative changes to PUHCA? Assuming these actions withstand any court challenges, what are your major remaining concerns about the Act?

Entergy supports the steps the SEC has taken to reduce regulatory burdens. However, as the SEC has admitted, PUHCA remains a barrier to effective competition. This barrier can only be removed through Congressional repeal of PUHCA.

PUHCA remains a concern for a multi-state holding company like Entergy. If states proceed to competition at different paces, PUHCA places a significant weight on a company's ability to move forward to compete. Restricted investments, required integration systems and financing prohibitions severely impact a companies structural and financial capability to adapt to a moving market.

11. As electricity markets have become more competitive, some have asserted that PUHCA prevents consumers from receiving the full benefit of competition. Do you agree or disagree, and why? Is competition in wholesale or retail electric markets dependent upon the participation of the registered holding companies? Is it a certainty that changes to PUHCA would enhance actual competition? Please provide specific examples to illustrate your answers.

PUHCA clearly serves as a barrier to consumers receiving the full benefits of competition.

PUHCA restricts the entry of new competitors into a competitive market. The less competitors in a market means higher costs for all participants. PUHCA costs investors and shareholders of registered companies lost business opportunities, lost efficiencies and adds costs to one sector of the industry, resulting in an unlevel playing field for electric competition.

If PUHCA were repealed, consumers would not be left unprotected. Consumers would benefit from a less restrictive regulatory environment in which diversification would further competition.

12. Do registered holding companies face unique problems if some state they serve adopts retail competition and some do not?

Any multistate company faces potentially inconsistent regulatory treatment. Entergy operates in four states and is also regulated by the City Council of New Orleans and certain cities in Texas. Registered holding companies already face unique barriers to competition due to PUHCA. If retail competition is allowed in one state and not in the others without addressing reciprocity, an additional barrier is created. A portion of one territory being open for competition and another excluded raises several concerns. Is it fair to allow one competitor to compete in other states but have their own state territory protected from competition? How will transmission be handled if a closed state is between two open states? As mentioned, cost avoidance and cost shifting scenarios exist any time a new market entrant is allowed to compete under a separate set of rules. The goal of retail competition is for every participant to play under the same set of rules.

13. How do the various retail competition proposals presently pending before the Congress affect decisions regarding stranded costs for registered holding companies? Do you support any of the formulations in these bills? Do you have alternative recommendations on this or other issues unique to registered holding companies if Congress enacts retail competition legislation?

As discussed in the stranded cost question above, Entergy believes that prudently incurred investments should be recovered. Legislation should clearly define and provide for the recovery of prudently incurred stranded costs investments. While many of the bills introduced in Congress address stranded costs, none, except for Sen. Bumpers' bill, requires the full recovery of stranded costs. Even then, Entergy has concerns about the process outlined by Sen. Bumpers for stranded cost recovery including the divestiture of assets provision. Sen. Bumpers has stated his concern for this provision as well and remains open to a new approach. In addition, as opposed to the certification process described in Sen.

Bumpers bill, Entergy believes that the utilities should bear the burden of providing the information to the state commissions and FERC who can then make a determination of prudently incurred costs.

Responses to Entergy Specific Questions Contained in the April 29, 1997 Letter to SEC Chairman Levitt

In an April 29, 1997 letter to SEC chairman Levitt, Mr. Dingell and Mr. Markey asked various questions regarding the SEC's current administration of PUHCA. That letter contained twenty-four (24) questions specifically regarding Entergy (see April 19, 1997 letter, pages 7-11). While the SEC undoubtedly will be responding to these questions, Entergy thought it would be useful to share its responses to these same questions. Entergy's responses are attached as Appendix B hereto.